

Chapter 2



Piping plover nest

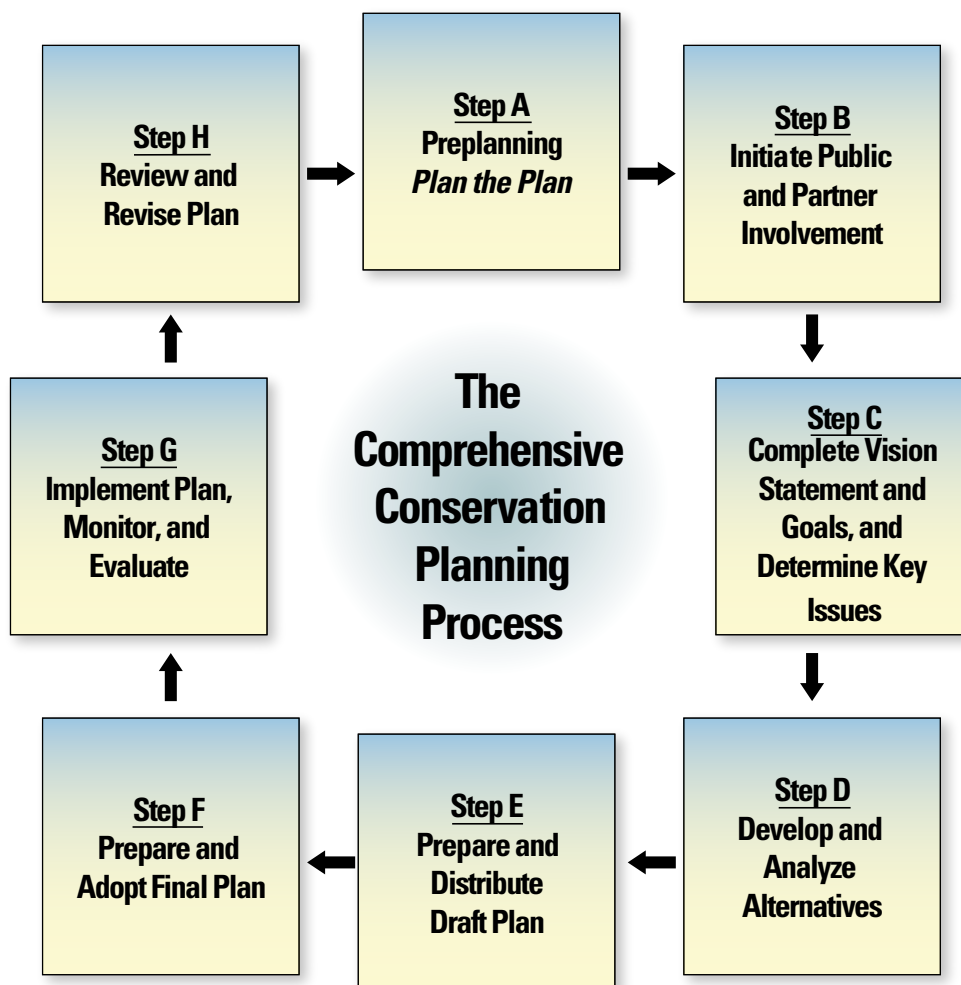
The Comprehensive Conservation Planning Process

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The Comprehensive Conservation Planning Process

Service policy (602 FW 3) establishes an eight-step planning process that also facilitates compliance with NEPA (figure 2.1). Details on each step in the process are available on our Web site at: <http://www.fws.gov/northeast/planning>. The CCP development process is described below in more detail.

Figure 2.1. Steps in the Comprehensive Conservation Planning Process.



Since 1944, we have focused on conserving lands within the approved acquisition refuge boundary, managing habitat for migratory birds, and establishing relationships with the community of Chatham and other partners. Our planning process started in 1998 and included all eight of the refuges in the Eastern Massachusetts NWR Complex. We published a Notice of Intent in the *Federal Register*, and began public scoping. In February of 1999, we held open houses in each unit for public comment on different issues, including current and future management strategies, land protection, and public uses. We were pleased with the participation at many of our meetings, which ranged from 30 people to more than 100. We recognized that attending our open houses would be difficult for many, and designed an issues workbook to encourage additional comments from those who were unable to attend. Those workbooks allowed people to share what they valued most about the refuge, their vision for its future and the Service's role in their community, and any other issues they wanted to raise. More than 8,000 people representing a variety of interests received workbooks. Workbooks were also available at open houses and at the refuge headquarters. We received more than 660 responses. The responses for Monomoy NWR were considered in the development of issues for this CCP.

In February 2001, we determined that writing a plan for eight refuges was too cumbersome, so we delayed our planning for Monomoy NWR and changed our focus on CCPs for the three northernmost refuges in the complex. The efforts for Monomoy NWR were halted until 2004, when, in an effort intended to initially “rescope” the issues surrounding management of the refuge, we asked the independent, nonpartisan, nonprofit facilitator, the Consensus Building Institute (CBI), to conduct an assessment that would provide specific, detailed recommendations for stakeholder involvement and participation in the planning process. Between November 15 and December 23, 2004, CBI conducted 15 interviews with 19 individuals either in-person or over the phone. We sought to provide CBI a diverse set of stakeholders who might identify many, if not most, issues relevant to management of the refuge. Some interviewees suggested additional individuals to interview. Thus, CBI interviewed a selection of stakeholders, from local businesses and residents to elected and appointed officials. The results of these interviews were summarized in a brief report.

On December 13, 2004, we announced in the *Federal Register* that we were restarting the CCP process for Monomoy and Nomans Land Island refuges and that an EIS would be completed. We began preparations for developing a joint CCP by collecting information on refuge resources and convening our core planning team, which consisted of refuge complex staff, Northeast regional Refuge System staff, representatives from the Wampanoag Tribe of Gay Head (Aquinnah), and the MA DFG.

Public scoping meetings were held in April 2005 in Chatham, Sudbury, and Chilmark, Massachusetts. More than 300 people attended these meetings. Most of the planning effort during this period was focused on the CCP for the Monomoy NWR. We discussed management issues, drafted a vision statement and tentative goals, and compiled a project mailing list of known stakeholders, interested individuals, organizations, and agencies. These steps were part of “Step B: Initiate Public Involvement and Scoping.”

In the fall of 2006, we reviewed the public comments received and used the information to firm up our key issues and develop our draft vision, goals, and objectives. A planning update was distributed with the draft goals and objectives. The Service put together a planning team composed of staff members, a representative from MassWildlife, and a representative from the Wampanoag Tribe of Aquinnah. This team worked to develop a refuge vision statement, which would be an achievable, future view of the refuge. This completed Step C, “Review Vision Statement, Goals, and Determine Significant Issues.”

In September 2008, we resumed this process after a second delay due, in part, to the transfer of refuge personnel. We also further decided to split apart Monomoy and Nomans Land Island refuges into separate CCPs for efficiency. We provided an update to the 373 individuals on our Monomoy CCP mailing list (“Step B: Initiate Public Involvement and Scoping”) in a fall 2008 newsletter. During this time, most of the planning efforts were focused on the Nomans Land Island NWR CCP; we continued scientific research and coordination with the Town for the Monomoy CCP. We contracted with the Provincetown Center for Coastal Studies to conduct a geomorphological analysis of the Monomoy barrier system, an analysis was conducted to estimate the impact of sea level rise on the refuge, and we applied for and received funding to address significant transportation issues affecting the refuge and the Town.

Next, we moved into Step D, “Develop and Analyze Alternatives.” The purpose of this step is to develop alternative objectives and strategies for addressing the issues and achieving the goals. From April 2009 to June 2011, we worked to develop our three alternatives. In March 2013, we distributed a newsletter updating our planning timeframes.

We completed Step E, “Prepare Draft Plan and NEPA document,” in 2014 by publishing a Notice of Availability (NOA) in the *Federal Register* announcing the release of the draft CCP/EIS and distributing it for public review on April 10, 2014. The draft CCP/EIS had three alternatives, all of which were compliant with Service and Refuge System missions, purposes for which the refuge was established, and other legal mandates. Alternative B was identified as the preferred alternative. The initial 60-day public comment period (through June 9), was extended to 180 days (October 10, 2014). During the 180-day period of public review, we held a public hearing and four public information workshops in Chatham to obtain written and oral comments. In addition to the public hearing comments, we received comments by regular mail, email, and personally delivered letters to the Monomoy NWR office. We received 255 written comments, 39 oral comments, and two petitions signed by about 2,225 individuals. Following the public comment period, we reviewed and summarized all the comments received and developed our responses. These are found in appendix K.

A final CCP/EIS was prepared as part of “Step F: Prepare and Adopt a Final Plan.” The Service preferred alternative identified in the final CCP/EIS remained alternative B, reflecting the desired combination of species protection, habitat management, public use and access, and administration for the refuge, but it was modified to incorporate changes resulting from public review and comments received on the draft CCP/EIS. The final CCP/EIS was made available for a 37-day review period from October 30 through December 7, 2015. We notified everyone on the CCP mailing list by postcard or email, and the availability of the final CCP/EIS was announced in an NOA in the October 30, 2015 *Federal Register*. During this latter review period, we received additional comments from 34 individuals, principally from those who commented on the draft plan.

Following review of comments on the final CCP/EIS, our Northeast Regional Director signed a ROD on March 18, 2016, which documented the decision to adopt alternative B. The availability of the ROD was announced in another NOA in the *Federal Register* on March 30, 2016 completing Step F. We adopted alternative B, incorporating any new or substantive information received during the review period into this CCP. Our management direction, presented in chapter 4 of this CCP, will guide refuge management decisions over the next 15 years. We will also use the final plan to promote understanding and support for refuge management among State agencies in Massachusetts, our conservation partners, Tribal governments, local communities, and the public.

“Step G: Implement Plan, Monitor, and Evaluate,” begins once we notify the public of the ROD issuance in the *Federal Register*. Most actions will be implemented in a phased manner over a number of years, and some will only be implemented once additional funds are obtained.

Future modifications of the CCP are possible following the procedures in the Service Manual (602 FW 1, 3, and 4) and in compliance with NEPA requirements as part of “Step H: Review and Revise Plan.” Minor revisions that meet the criteria for categorical exclusions (550 FW 3.3C) will require only an Environmental Action Memorandum. We must fully revise CCPs every 15 years.

Wilderness Review

The planning team initiated a Wilderness Review, as required by refuge planning policy, to determine if portions of Monomoy NWR that were excluded from the original 1970 wilderness designation lands and waters in fee title ownership were suitable to be proposed for designation as a wilderness area.

The purpose of a wilderness review is to identify and recommend for congressional designation Refuge System lands and waters that merit inclusion in the NWPS. Wilderness reviews (610 FW) are a required element of CCPs and conducted in accordance with the refuge planning process outlined in 602 FW 1 and 3, including public involvement and NEPA compliance.

There are three phases to the wilderness review process: inventory, study, and recommendation. Lands and waters that meet the minimum criteria for wilderness are identified in the inventory phase. These areas are called wilderness study areas (WSAs). In the study phase, a range of management alternatives is evaluated to determine if a WSA is suitable for wilderness designation or management under an alternate set of goals and objectives that do not include wilderness designation.

The recommendation phase consists of forwarding or reporting the suitable recommendations from the Director through the Secretary and the President to Congress in a wilderness study report. The wilderness study report is prepared after the CCP has been finalized.

Areas recommended for designation are managed to maintain wilderness character in accordance with management goals, objectives, and strategies outlined in the final CCP until Congress makes a decision or the CCP is amended to modify or remove the wilderness proposal.

Appendix E summarizes the inventory phase of our wilderness review for Monomoy NWR. The wilderness inventory determined that none of the current non-wilderness portions of South Monomoy Island, excluded from wilderness designation in 1970, yet meet the eligibility criteria for further detailed study as WSAs as defined by the Wilderness Act during the 15-year plan period.

Since the wilderness inventory determined that no current non-wilderness portions of Monomoy NWR possess wilderness character sufficient for WSA designation, the wilderness study and recommendation phases of the wilderness review process will not be undertaken during the 15-year plan period. The refuge will again undergo another wilderness review in 15 years as part of the next planning cycle, at which time WSA designation and the wilderness study and recommendation phases will be reconsidered for the Inward Point and Powder Hole areas. We may also conduct a wilderness review prior to the next planning cycle should significant new information become available, ecological or other conditions change, and/or we identify a need to do so.

Issues, Concerns, and Other Opportunities

From our issues workbook, public and focus group meetings, the assessment conducted by CBI, and planning team discussions, we developed a list of issues, opportunities, and any other item requiring a management decision. Over time, some of these issues faded in importance while others surfaced or gained more importance. We concentrated on the issues raised during scoping and afterwards as the drivers for our analysis and comparison of alternatives in the draft and final plans. Most of these issues are described as they were of concern in 2005, when we began again working on this CCP. In 2016, some of the issues are not as pressing, but we include them here, as they were considered in the development of this CCP. We addressed three categories of issues in the CCP:

- (1) Significant issues—these issues formed the basis for the development and comparison of different management alternatives in the draft and final CCP/EISs. Significant issues are discussed in detail below.
- (2) Other issues and management concerns—these issues and management concerns were also presented in the draft and final CCP/EISs, but were not considered “significant.” These issues are also discussed below.
- (3) Issues and concerns outside the scope of this analysis—the resolution of these issues falls outside the scope of this CCP or outside the jurisdiction or authority of the Service. These issues are addressed at the end of this chapter.

Significant Issues

Addressing the significant issues below will help us achieve some of the goals described previously. Chapter 4 describes how we address these significant issues, based on adaptive management of a dynamic refuge environment, and how addressing these issues will help achieve refuge goals.

Determination of Refuge Boundary and Jurisdiction—The Declaration of Taking encompasses all the land and waters from the MLW line on the eastern shore of the refuge to an area within Nantucket Sound identified by latitude and longitude coordinates on the western side (i.e., the eastern refuge boundary is defined as MLW and is a shifting boundary; however, the western side of the refuge boundary is fixed). Shifting boundaries due to erosion and deposition is an ongoing issue. It is important to note that the wilderness designation extends to mean low water across the refuge.

- **Western Boundary.** Other than prohibiting horseshoe crab harvesting, the Service has not regulated any of the activities occurring within the Declaration of Taking's fixed western boundary. Concern about if and how activities, particularly fisheries, might be regulated by the Service within these waters has been expressed by Town and State officials.
- **Eastern Boundary.** Sand shoals constantly shift, creating a complex nearshore geomorphology. As early as 2002, the connection between Nauset/South Beach and the north tip of South Monomoy Island began forming, with the intertidal connection probably occurring in 2005 and an upland connection visible by 2006. Since the boundary of the Cape Cod National Seashore extends ¼ mile beyond the land, and Nauset/South Beach has been under the jurisdiction of the Cape Cod National Seashore for many years, the two Federal boundaries technically overlap. The Service, NPS, and the Town signed a MOU in 2007/2008 that established a management boundary for use in determining jurisdictional authorities and working together on safety and resource management issues. It also recognized the need to work together to achieve resolution of the permanent boundary issue. That MOU has subsequently expired. In June 2015, the Service and the Town entered into a new 15-year MOU that addresses this eastern boundary. This is described in more detail in chapter 3.

Fishing—Fishing is a traditional use of the waters around the Monomoy Islands. Town officials and local residents, including many people who earn a living shellfishing or commercial fishing, expressed the desire that the refuge remain open for commercial and recreational fishing.

- **Shellfishing.** Residents of the Town can apply for a shellfish permit to collect shellfish. People explained that residents enjoy this recreational activity but usually go to areas more easily accessed than Monomoy NWR. The species harvested in the region are softshell clams, quahog clams, razor clams, sea (surf) clams, mussels, scallops, and oysters, and harvest locations change annually depending upon the suitability of the habitat for these species.
- **Sport Fishing.** Recreational fishing is conducted by individual anglers and by guides and charter captains. The Morris Island portion of the refuge is open 24 hours a day for recreational fishing. Concern was expressed about continued access to the islands for fishing and 24-hour fishing access to Morris Island, as a gate had been recently installed at refuge headquarters.
- **Commercial Open Water Fishing.** The commercial fishing industry in Chatham includes open water fishing which is conducted using hook and line, trawling, fish pots (lobster, whelk, and crab) and fish weirs. There is strong interest by the Town, the Massachusetts Division of Marine Fisheries, State legislators, and local residents to allow unencumbered access and fishing in Nantucket Sound and the waters east of the Monomoy Islands and west of Nauset/South Beach, known locally as the Southway.

Management of Resources—This includes concerns relating to both archaeological and biological management of resources. Some of these are significant issues because the objectives and/or strategies differed among the alternatives.

- **Predator Management.** Currently, the refuge manages predators such as coyote, greater black-backed gull, and black-crowned night-heron through a variety of lethal and non-lethal methods. Predator management elicits a strong emotional response from some individuals. Some feel that management of coyotes is ineffective and that it is a regional issue, not solely one for the refuge to resolve. Some stated it is imperative that we use existing non-lethal alternatives and actively search out new ones; additionally, when lethal management does occur, the targets are specific. Some stated that lethal predator management is never appropriate for a national wildlife refuge. Others feel policies that integrate deterrents and careful habitat modification target only offending individuals, and that actively searching for alternatives to lethal management is more appropriate. Some suggested more research was needed on alternative types of management and their effectiveness. The nesting laughing gull and tern (common, roseate) populations have increased dramatically since the predator management program was instituted in the late 1990s. This CCP addresses predator management as an important management tool to minimize losses to listed waterbird and shorebird populations utilizing the refuge.
- **Mosquito Control.** Currently, the Cape Cod Mosquito Control Project controls mosquitoes on Morris Island including on Monomoy NWR. *Bacillus thuringiensis israelensis* (Bti) is a bacterium that acts specifically on mosquito larvae and prevents their development. According to the few who mentioned this issue, the application is safe and there have been no incidents with humans or animals. Many in the Town do support the control of mosquitoes due to their nuisance and, more importantly, their ability to carry various diseases.
- **Habitat Management of Nesting Seabirds and Shorebirds.** Most interviewees noted that this is the primary natural resource of the refuge. Most interviewees considered this a valuable resource and one that the refuge does a decent to superior job in managing and protecting. Some noted the valuable relationship between Massachusetts Audubon Society and the refuge, including the tours that take place in the summer. A few noted that issues have arisen in the past, from gull control to closure of various areas/islands. Overall, however, most interviewees appeared satisfied with the refuge's management of this primary resource. Nesting seabird and shorebird habitat management involves vegetation management, including the use of prescribed burning to reduce cover of grasses and woody plants in the tern colony.
- **Seals.** The seal population on Monomoy NWR has grown steadily since 2005. Some people believe that seals are impacting sport and commercial fisheries. There is also concern about the increase in the sightings of great white sharks off the Monomoy Islands and elsewhere on Cape Cod, which is attributed to the increasing seal population.
- **Dredging and Beach Nourishment.** The Town, U.S. Army Corps of Engineers (USACE), local harbors and marinas, and private individuals want to dredge or deposit dredged material within the refuge boundary for recreational and commercial use, or to create or improve habitat for species of conservation concern in non-wilderness areas. In addition, they want to see local beach areas created and maintained outside the refuge boundary.

Public Access—Public access at Monomoy NWR consists of a number of key components.

- **Parking at Morris Island.** Stakeholders indicated that the parking lot at the refuge headquarters is often too small to accommodate visitor demand. Some local individuals feel that the refuge's open access parking attracts people to Monomoy NWR to use the beach for recreational activities and sunbathing, thereby exacerbating a parking situation on the Town-owned causeway. The narrow causeway was not designed to accommodate parked cars, which can cause a safety problem. Also, some local residents are concerned that the parking at Morris Island attracts too many people and creates too much noise from buses.
- **Traffic.** Neighbors with property adjacent to the refuge have issues with the public, including vans, cars, trucks, recreational vehicles and school buses, using the right-of-way on Tisquantum Road to get to the refuge. The road is narrow and, other than snow removal, maintained primarily by the Quittneset Association. Some noted that although the road is used for refuge operations, the refuge does not assist in paying for or maintaining the road. Others noted that due to poor signage, refuge traffic sometimes ends up in other neighborhoods.
- **Parking at Stage Island.** For many years we issued a very limited number of permits to allow parking in our lot on Stage Island. There is still a desire by some to continue access at this site, but our use of this lot has increased in recent years and parking and dinghy storage by others interferes with refuge operations.
- **Continued Access.** The general public, including anglers, expressed a desire to ensure that free public access to the refuge continues. Shore fishermen would like to continue to access the Morris Island portion of the refuge 24 hours a day for fishing.
- **Ferry Services.** Currently, there are two ferry services that have special use permits (SUPs) to land on the refuge. One of the permits allows the provider to use the refuge as a base of operations. Some raised strong concern about the impacts of any ferry service operating at refuge headquarters. Concerns mentioned included parking on the causeway and near the headquarters, number of visitors, visitors' impacts to abutting properties, and use of ferry service as a "means to sunbathe not bird watch." Some individuals have raised concerns about the fairness of the ferry service from the refuge headquarters in that only one company has a permit that allow use of the refuge. Others noted that the ferry service provides a valuable service to visitors, ensuring that the public has direct access to North Monomoy Island and Nauset/South Beach. Some noted that this ferry service was essential to accessing the lighthouse, and that much of the use at the refuge headquarters is not ferry service customers, but general public visitors.
- **Over-Sand Vehicle (OSV) Use.** There have been some problems with illegal OSV use on the refuge and in the wilderness area. This is a concern because the beach provides habitat for the federally endangered northeastern beach tiger beetle. With the February 2013 breach across Nauset/South Beach, access to South Monomoy Island by OSV is less of a concern.

Refuge Relationship with Neighbors and Local Community—The issues that may involve refuge neighbors and the local community will be addressed through coordination and partnerships. These issues could affect daily operations and visitor experience.

- Quitnessit Neighborhood. Some interviewees noted issues regarding the refuge's impact on abutting properties and the Quitnesset neighborhood. Of particular concern is traffic on Tisquantum Road, noise from the refuge parking lot, the use of the refuge by sunbathers, and the commercial nature of the ferry service which has permission to operate from refuge headquarters.
- Town of Chatham. Some interviewees noted that the Town is the sole municipal neighbor of the refuge and, thus, this relationship should be carefully maintained and nurtured. Points mentioned are noted below.
 - Some stated that the Service does not do enough to actively keep the Town informed in order to maintain an effective working relationship.
 - Some stated that the Service has not been consistent regarding its determination on public uses, nor kept promises regarding important issues with the Town.
 - Among some interviewees, there is great unease about the presence and role of the Federal Government in a local area that prides itself on its independence and self-sufficiency.

Public Uses—Many non-priority public uses, including those listed below, are popular on Cape Cod. Both residents and summer visitors want to engage in these uses on and around the refuge. Some of these activities are not appropriate uses of a national wildlife refuge and do not contribute to the purpose of the refuge or the mission of the Refuge System, nor do they support the six priority public uses. Other activities can facilitate priority public uses. Below we provide background information on the uses we believe are most likely to be controversial. We also discuss several other non-priority uses of concern under the “Other Issues” section of this chapter.

- Commercial Services (including guide, teaching, interpretation, leading trips (e.g., natural history tours)). Many noted that this was a growing activity on the refuge. Commercial guides include guides for activities such as seal watching, surf fishing, surf fly-fishing, and sea duck hunting. Some expressed concern regarding commercial guide services that use the area, especially for commercial fly-fishing. Many of these guides come in from other states and may not feel the ownership of Monomoy felt by local residents and more regular users. Some felt guides “have no vested interest in preserving and maintaining Monomoy.” Some interviewees said guides cross from one side of the refuge to another through the grassy nesting areas of protected birds. There was concern expressed that guides, although commercial, are not regulated. Some of the commercial guiding occurs on Morris Island and not in the designated wilderness areas. There is concern by some commercial guides that our management actions will negatively affect their activities on the refuge.
- Dog Walking. Currently, only Morris Island is open to dog walking (on leash). However, some people explained that dogs are not always kept on leashes and other people expressed that dogs should be banned since they disturb the birds. The Master Plan of 1988 banned pets year-round on the Monomoy Islands and during the spring and summer on the Morris Island portion of the refuge. This latter prohibition was never visibly enforced, however. In addition, the other eastern Massachusetts refuges have already eliminated dog walking.
- Boating. Within the refuge's Declaration of Taking boundary, there is both motorized and non-motorized boating, including standup paddleboards. A few individuals expressed concern that boating has become too pervasive, has adverse impacts to seals, and may be dangerous to those who approach seals too closely. Motorboats are normally excluded from wilderness waters but

have been allowed to continue in Monomoy NWR waters because a provision in the 1970 Monomoy wilderness designation referred back to a section 4(d) of the Wilderness Act which allows motorized boating to continue if already established.

- Moorings. The Town issues boat moorings in Stage Harbor. Since the Stage Harbor mooring field is near capacity, there will be more demand/pressure from commercial fishermen to place moorings and store their boats in the waters on the west side of North Monomoy Island. This has already happened and is anticipated to continue. Placement of these moorings within the Declaration of Taking area would be a concern to the Service, particularly in eelgrass beds.
- Kite Boarding (also known as kitesurfing). The refuge staff has observed this activity disturbing beach-nesting birds, as well as birds foraging in shallow waters.
- Personal Watercraft (wave runners and jet skis). These vessels are small and fast. They are used in shallow areas and, as with kite boarding, disturb beach-nesting, foraging, and staging birds. Interviewees stated that the NPS ban of personal watercraft in the Cape Cod National Seashore has had a positive impact at the refuge, particularly in the Southway.
- Seal Watching. Most interviewees stated that this is an appropriate and positive activity on the refuge. Seal watching is a popular activity on the refuge and ferry services offer rides to view seals. Tourists like this activity more than whale watching because the ride is much shorter and not as rough, and seals can almost always be observed. However, some explained that it puts a burden on the refuge headquarters, adds to traffic and congestion, and presents problems regarding parking.

Other Issues

The following issues are narrower in scope or interest than the significant issues, but nevertheless were important to the public in 2005 and beyond. They are addressed in the management direction set forth in chapter 4.

- Beach Sports, Grilling, and Use of Shade Tents. Interviewees noted that visitors may confuse the mission of the Cape Cod National Seashore (recreation and resource protection) with the refuge's mission of resource protection and appreciation of that resource.
- Beach Use (sunbathing and picnicking). Most of the interviewees stated that sunbathing should not be permitted since this is not an appropriate activity for a wildlife refuge, especially with so many other beaches in the vicinity where sunbathing can be accommodated.
- Kayaking. Kayakers want access from Morris Island. Use of the steep stairs at the refuge can impact other visitors using the stairs and could be unsafe. Additionally, although kayaking can support wildlife observation and photography, kayakers can also disturb seals and roosting shorebirds.
- Law Enforcement. Nearly everyone interviewed felt there were not enough law enforcement personnel to effectively regulate the refuge and its users, both at headquarters and out on the flats and islands. Some interviewees suggested further coordination with the NPS. Some noted that regular users tend to be self-policing and have informally assisted the Service in monitoring activities.
- Beachcombing. Most interviewees stated that they did not see any issues with beachcombing on the refuge. However, some noted that archaeological artifacts should be turned over to the appropriate authorities.

- Trespassing by People Engaged in Shore/Surf Fishing. Most interviewees stated that surf-fishing is an appropriate and positive activity on the refuge. Surf fishing takes place on Monomoy NWR for striped bass, blue fish, and others. Some said that although they saw no problem with the activity, there could be issues where fishermen traverse the island, cutting through the grassy areas where birds nest. Fishermen and other users also traverse the salt marsh. Fishermen often leave their gear within posted closures on elevated areas in the salt marsh—areas where oystercatchers and terns often nest.
- Horseshoe Crab Harvesting for Biomedical Use. This activity is not allowed on the refuge based on a final compatibility determination published on May 22, 2002, which found this to be incompatible with the refuge purpose. The Service was sued and the Service prepared additional information at the request of the Court. This information was accepted and the closure on horseshoe crab harvesting remains in place. Most interviewees believed that this restriction was appropriate and handled effectively. The few who mentioned the resource noted the importance of horseshoe crabs to the lifecycle of birds and other wildlife. Support for horseshoe crab harvesting was raised by one individual at the 2005 scoping meetings in Chatham.
- Archaeology and Historic Artifacts. A few individuals mentioned that the refuge contains numerous historic artifacts, from shipwrecks to Native American cultural resources. Some expressed concern that the Service has not adequately catalogued these resources and does not have the personnel to prevent beachcombers and others from removing such artifacts.
- Low-flying Aircraft. Low-flying aircraft continue to be a problem on the refuge, as this activity disturbs birds and creates noise in the Monomoy Wilderness.

Issues Outside the Scope of the Plan or Not Completely Within the Jurisdiction of the Service

- Colonial Ordinance. During scoping and in comments received on the draft and final CCP/EIS, a number of commenters, including the Town and members of the Massachusetts legislature, asked about the applicability of the public trust doctrine and the Colonial Ordinances of 1641 and 1647. Subject to duly enacted State and Federal regulations, these state law doctrines give the public certain rights below the mean high water line, which include the right to “fish, fowl, and navigate.” Pursuant to the Supremacy Clause of the Constitution, State law must give way to federal law where the two are in actual conflict. Accordingly, these state-law public rights of “fishing, fowling, and navigation” are subject to regulation by the Federal Government, where it has duly exercised its authority to regulate the areas in which the public has these rights. Therefore, as long as these areas remain part of the Monomoy NWR and/or designated as wilderness, these state law rights may only be exercised if not prohibited by the Federal laws governing national wildlife refuges and wilderness areas designated under the Wilderness Act.
- Visual impact. Some people noted that extensive activity on Nauset/South Beach could detract from the relative isolation and wilderness experience of the refuge. We have entered into an agreement with the town of Chatham that established a management boundary in which lands east of this boundary will be managed by the town. Therefore, these lands are now outside Service management.
- Cape Wind Project. This project in Nantucket Sound does not involve refuge lands. The purpose of this CCP is to develop management direction for refuge lands. Additionally, the permitting of the Cape Wind project is not within the jurisdiction of refuge staff. Other divisions within the Service have responsibility for the issuance of Federal permits.